XIII

REPORT

OF THE

LEGAL REMEMBRANCERS,

NORTH-WESTERN PROVINCES,

FOR 1867-68.

Allahabad:

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1868.

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LEGAL REMEMBRANCERS,

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FOR 1867-68.

No. 89 OF 1868.

FROM

W. C. PLOWDEN, ESQUIRE,

Secretary to the Board of Revenue,

North-Western Provinces, Allahabad,

To

R. SIMSON, ESQUIRE,

Secretary to the Government of the

North-Western Provinces.

DATED ALLAHABAD, THE 27 AUGUST, 1868.

SIR,

REVENUE.

Present:
J. F. D. INGLIS, ESQ.; and
H. S. REID, ESQ.

I AM directed by the Board, in their capacity of Legal Remembrancers, to submit the accompanying Report on the Civil Suits in which Government has been concerned during the year 1867-68.

2. The Divisional Returns from which this Report is composed were received on the dates given below :—

Meerut, ...	May 11th.	Allahabad, ...	May 23rd.
Rohilcund, ...	May 20th.	Benares, ...	July 15th.
Agra, ...	June 12th.	Jhansie, ...	May 11th.

3. It will be perceived that the delay in the submission of the Board's Report has been occasioned by the want of punctuality evinced in the Benares Division, the returns for which were not received by the Board till the 15th July—exactly two months after the date on which they were due.

4. The Board have already issued explicit orders as to the mode in which these returns should be compiled,—see paras. 7 to 11 of their Circular Order No. 17, dated 29th July, 1864. If the injunctions therein laid down were attended to by District Officers and Commissioners, there is no reason why the Divisional Returns should not be submitted at a date earlier even than that on which they are required. In allowing six weeks for the compilation of these returns in the District and Divisional Offices, the Board consider that an ample margin is given to provide for all unforeseen causes of delay, and they regret they cannot hold the Commissioner of Benares free from censure for the want of punctuality in the submission of his returns.

5. In the year under report the total number of cases in which Government has been a party is 330, against 348 in the eleven months of 1866-67, and 344 in the year 1865-66. These figures, however, include miscellaneous applications; and if these be excluded from the return, the litigation in which Government has been concerned during the year will be found to have very perceptibly diminished the suits and appeals in 1867-68,—numbering only 244, against 293 in the eleven months of 1866-67. If to these be added six cases which had not been shown in the statement for 1866-67, though they are now shown to have been pending at the close of that year, the figures will be 244 for twelve months of 1867-68, against 299 for eleven months of 1866-67.

6. During the year under report the number of suits and appeals instituted was 143, of which 113 were instituted against Government, and 30 by Government,—contrasting not unfavourably with 155 and 59 respectively in the previous eleven months.

7. The accompanying Statement A. shows the results of the litigation during the year, and gives a classification of the suits :—

A.

	Pending.	Instituted.	Total.	Decided.		Pending.	Percentage.	
				For Government.	Against Government.		For Government.	Against Government.
Original Suits, ...	4	20	24	16	3	5	84·2	15·8
Appeals, Regular, ...	4	8	12	3	6	3	33·3	66·7
Ditto, Special, ...	3	2	5	0	4	1	...	100·0
Applications, ...	19	28	47	30	2	15	93·7	6·3
Total, ...	30	58	88	49	15	24	76·6	23·4
Contract, ...	...	...	8	6	1	1	85·7	14·3
Exchequer, ...	...	...	5	4	0	1	100·0	...
Confiscation, ...	...	...	11	3	7	1	30·0	70·0
Wards, ...	...	...	10	5	4	1	55·6	44·4
Crown-lands and Escheats, ...	...	...	7	2	1	4	66·7	33·3
To set aside orders, ...	...	...	0	0	0	0	...	...
Trespass, ...	...	...	1	0	0	1	...	...
Wages, ...	...	...	0	0	0	0	...	...
Costs, ...	...	...	46	29	2	15	93·5	6·5
Total, ...	...	...	88	49	15	24	76·6	23·4
	...	...	242	108	86	48	55·7	44·3
Grand Total, ...	...	...	330	157	101	72	61·14	38·86

	Total.	Decided.		Pending.	Percentage.	
		For Government.	Against Government.		For Government.	Against Government.
Original Suits, ...	24	16	3	5	67·2	32·8
Appeals, Regular, ...	12	3	6	3	33·3	66·7
Ditto, Special, ...	5	0	4	1	100·0	...
Applications, ...	47	30	2	15	93·7	6·3
Total, ...	88	49	15	24	76·6	23·4
Contract, ...	8	6	1	1	85·7	14·3
Exchequer, ...	5	4	0	1	100·0	...
Confiscation, ...	11	3	7	1	30·0	70·0
Wards, ...	10	5	4	1	55·6	44·4
Crown-lands and Escheats, ...	7	2	1	4	66·7	33·3
To set aside orders, ...	0	0	0	0	...	...
Trespass, ...	1	0	0	1	...	...
Wages, ...	0	0	0	0	...	...
Costs, ...	46	29	2	15	93·5	6·5
Total, ...	88	49	15	24	76·6	23·4
	242	108	86	48	55·7	44·3
Grand Total, ...	330	157	101	72	61·14	38·86

	Instituted.	Total.	Decided.		Pending.	Percentage.	
			For Government.	Against Government.		For Government.	Against Government.
Original Suits, ...	79	141	78	38	25	67·2	32·8
Appeals, Regular, ...	27	44	23	12	9	65·7	34·3
Ditto, Special, ...	7	8	6	0	2	100·0	...
Applications, ...	44	49	1	36	12	2·7	97·3
Total, ...	157	242	108	86	48	55·7	44·3
Contract, ...	...	14	6	4	4	60·0	40·0
Exchequer, ...	...	18	12	3	3	80·0	20·0
Confiscation, ...	...	45	22	11	12	66·6	33·4
Wards, ...	...	31	14	10	7	58·3	41·7
Crown-lands and Escheats, ...	...	30	16	7	7	69·6	30·4
To set aside orders, ...	...	46	31	10	5	75·6	24·4
Trespass, ...	...	11	5	5	1	50·0	50·0
Wages, ...	...	1	1	0	0	100·0	...
Costs, ...	...	46	1	36	9	2·7	97·3
Total, ...	...	242	108	86	48	55·7	44·3
Grand Total, ...	...	330	157	101	72	61·14	38·86

	Grand Total.
Original Suits, ...	165
Appeals, Regular, ...	56
Ditto, Special, ...	13
Applications, ...	96
Total, ...	330
Contract, ...	22
Exchequer, ...	23
Confiscation, ...	56
Wards, ...	41
Crown-lands and Escheats, ...	37
To set aside orders, ...	46
Trespass, ...	12
Wages, ...	1
Costs, ...	92
Total, ...	330
Grand Total, ...	

8. Statement B. shows the suits classified according to divisions,—the upper line against each division containing the suits in which Government was plaintiff; the lower line those in which the Government, through its officers, was put on its defence.

B.

Division.	Contracts.	Exchequer.	Confiscation.	Wards.	Escheats.	To set aside orders.	Trespass.	Wages.	Costs.	Total.	Grand Total.
Meerut, ...	2	0	3	0	0	0	0	0	11	16	48
Ditto, ...	4	0	6	1	3	7	3	0	8	32	
Rohilcund, ...	1	3	7	0	5	0	0	0	20	36	120
Ditto, ...	2	10	20	0	5	10	0	0	37	84	
Agra, ...	1	0	0	0	2	0	0	0	2	5	32
Ditto, ...	5	1	2	3	10	4	2	0	0	27	
Allahabad, ...	4	0	0	0	0	0	0	0	3	7	35
Ditto, ...	2	3	3	5	7	8	0	0	0	28	
Benares, ...	0	0	1	10	0	0	1	0	10	22	93
Ditto, ...	1	4	14	22	5	17	6	1	1	71	
Jhansie, ...	0	2	0	0	0	0	0	0	0	2	2
Ditto, ...	0	0	0	0	0	0	0	0	0	0	
Total, N.-W. P., ...	22	23	56	41	37	46	12	1	92	330	330

9. It will be observed from the first of these statements that, as was anticipated in my Report of last year, there has been an increase in the original suits instituted during the year in which Government has been the plaintiff. On the other hand, the number of cases in which the Government has been impleaded has diminished. In both cases the results may be attributed to the causes which were indicated in paragraph 7 of the Report for 1866-67.

10. Analyzing the litigation as displayed in Statement A., we have the following results :—

Of the 115 pending cases, 66 were original suits, 4 of which were instituted by Government, and in the remaining 62 the Government was put on its defence, against 5 and 47 respectively last year; 21 were regular appeals, 4 instituted by and 17 against Government, compared with 3 and 19 severally in 1866-67; 4 were special appeals, 3 preferred by and 1 against Government, against 0 and 5 respectively last year; and 24 were applications, 19 on behalf of and 5 against Government, compared with 14 and 7 in the eleven months of 1866-67.

Of the 215 cases instituted during the year under report, 99 were original suits, in 20 of which Government was the plaintiff; 35 were regular appeals, of which 8 were preferred on the part of Government; 9 were special appeals, 2 of which were preferred by Government; and 72 were applications, in 28 of which the Government was the moving party.

Against these figures for 1867-68, those for the eleven months of 1866-67 are as follow :—

Of 126 original suits instituted, 14 were instituted by Government; of 76 regular appeals, the Government took the initiative in 41; and of 12 special appeals,

4 were preferred by Government; while of the remaining 34 cases (applications for execution, &c.), 31 were made by the officers of Government.

11. Whether as reflecting credit upon the decisions of the Courts of original instance or the procedure of the administrative officers, it is satisfactory to notice the small number of appeals that have been preferred. There were 44 cases of appeal instituted during the year,—10 on the part of Government, and 34 by private persons,—against 88 in the previous year, in no less than 45 of which Government was the appellant.

12. The number of applications made against Government is not creditable. These are, as a general rule, and with very few exceptions, applications to realize costs, or to take out execution of a decree. It is the business of the Government officers, when the decision of the Courts has been finally given against them, to take action on that decision at once, to place the decree-holder in possession of what has been awarded him, and to pay up the costs which may have been decreed against Government. From the number of cases shown in which applications have been made against the Government officers (no less than 41 out of 72), it would appear that this is not understood. The greatest number (37) of these applications has been in the Rohilcund Division, and the Board have issued general instructions to avoid such an occurrence in future.

13. The accompanying statement shows the results of the litigation during the year, in so far as the decisions have gone for or against Government.

Percentage for Government.

	1867-68.	1866-67.	1865-66.	1864-65.	1863-64.
Original Suits, ...	69 6	74·4	57·9	59·3	75·0
Appeals, Regular, ...	59·0	41·1	76·2	80·0	89·5
Ditto, Special, ...	60·0	64·3	100·0	85·7	87·5
Applications, ...	55·0	87·1	85·0	80·0	100·0

Percentage against Government.

	1867-68.	1866-67.	1865-66.	1864-65.	1863-64.
Original Suits, ...	30·4	25·6	42·1	40·7	25·0
Appeals, Regular, ...	41·0	58·9	23·8	20·0	10·5
Ditto, Special, ...	40·0	35·7	0·0	14·3	12·5
Applications, ...	45·0	12·9	15·0	20·8	0·0

14. In original suits the results are satisfactory, the Government gaining its cause in 7 out of 10 cases. The Board are glad to be able to notice a better state of things in regard to the appellate cases than that which they had to comment upon in their Report for the preceding year. In appeal cases in 1867-68, the majority of decisions have been in favour of the Government,—the decisions in favour of Government being 3, to 2 against Government. The number of cases in which the suit has been closed by a compromise is 21, in 8 of which the compromise has been in favour of Government, and in 13 against it.

15. The following is a classification of the suits in which Government has been a party, according to the nature of the claim involved:—

Fifty-six cases were connected with the events of 1857-58, and subsequent confiscations; of these 43 were decided, 25 in favor of and 18 against Government.

Thirty-seven cases related to escheats and crown-lands, of which 26 were decided, 18 in favour of and 8 against Government.

Twenty-three cases were connected with exchequer proceedings, relating to recovery of revenue, principally for ferry dues and excise; of these 19 were decided, 16 in favour of and 3 against Government.

16. There were 46 cases to set aside the orders of Administrative, Settlement, and Magisterial Officers; of these 41 were decided, 31 in favour of and 10 against Government.

17. In 22 cases the claim was based on breach of contract, mostly in the Public Works Department; 17 of these were decided, 12 for and 5 against Government.

18. There were 12 cases of trespass, 10 of which were decided, 5 for and 5 against Government. Of the remaining cases, in 41 Government was concerned in so far only as it represented the interests of minors whose property was administered by the Court of Wards; 33 of these cases were decided, 19 for and 14 against the Court of Wards.

19. There was one claim for wages brought against a servant of Government, and resulting in favour of Government. The remaining cases (92) were applications for execution of decrees, and to recover costs; 68 were disposed of, 30 against and 38 for Government.

20. The subjoined table shows the nature of the litigation in the several divisions :—

	Meerut.				Rohilcund.				Agra.				Allahabad.				Benares.				Jhansie.			
	Decided in favour of Government.	Decided against Government.	Pending.	Total.	Decided in favour of Government.	Decided against Government.	Pending	Total.	Decided in favour of Government.	Decided against Government.	Pending.	Total.	Decided in favour of Government.	Decided against Government.	Pending.	Total.	Decided in favour of Government.	Decided against Government.	Pending.	Total.	Decided in favour of Government.	Decided against Government.	Pending.	Total.
Contract, ...	4	1	1	6	0	2	1	3	3	2	1	6	5	0	1	6	0	0	1	1	0	0	0	0
Exchequer, ...	0	0	0	0	9	2	2	13	0	0	1	1	2	0	1	3	3	1	0	4	2	0	0	2
Confiscation, ...	5	1	3	9	12	14	1	27	0	2	0	2	1	1	1	3	7	0	8	15				
Wards, ...	1	0	0	1	0	0	0	0	3	0	0	3	3	0	2	5	12	14	6	32				
Crown-lands and Escheats,	2	1	0	3	5	0	5	10	7	4	1	12	2	2	3	7	2	1	2	5				
To set aside orders, ...	6	0	1	7	3	6	1	10	2	2	0	4	7	1	0	8	13	1	3	17				
Trespass, ...	0	3	0	3	0	0	0	0	2	0	0	2	0	2	0	0	3	2	2	7				
Wages, ...	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1	0	0	1				
Costs, ...	8	5	6	19	16	31	10	57	2	0	0	2	1	1	1	3	3	1	7	11				

21. Rohilcund again exhibits the greatest amount of litigation, and Agra would again stand lowest, if it were not that Jhansie has now for the first time been added to the list of divisions in which Government has been forced to appear in the Civil Courts. In the Agra Division this year three suits only were instituted by Government; in all the other cases in this division Government was put on its defence.

22. The two cases for which Jhansie is set down were exchequer cases in which the officers of Government were compelled to sue to recover arrears of excise revenue from the defaulters' securities. It is still worthy of notice that, however frequently Government may be put into Court in the Regulation Provinces, in the Non-Regula-

tion Provinces, since these reports have been rendered, no case has been brought against the officers of Government. The Board believe there can be no question as to the cause of this singularity. The procedure of the administrative and executive officers is not more perfect, nor are their decisions more accurate, than those of their compeers, in the Regulation Provinces ; but the fact remains that in those divisions where the executive officers are Civil Judges as well as administrators, their actions and orders are not made the subject of suits in the Civil Courts over which they preside.

23. In regard to the number of cases under trial, the several divisions rank as follows :—

	1867-68. No. of Cases.	1866-67. No. of Cases.	1865-66. No. of Cases.	
Rohilcund, ...	120	115	100	
Benares, ...	93	89	95	
Meerut, ...	48	58	55	
Allahabad, ...	35	49	58	
Agra, ...	32	37	36	
Jhansie, ...	2	...	...	Non-Regulation.
Kumaon, ...	...	...	...	
Ajmere, ...	...	...	...	

If, however, the miscellaneous applications are excluded—and if this is done a more accurate idea of the real litigation in each of the divisions will be arrived at—the position of the divisions will somewhat alter. Benares will stand first, with 82 cases; Rohilcund second, with 63 cases; Allahabad third, with 32 cases; and the remaining divisions in their former positions, with the following number of cases: Meerut, 29; Agra, 24; and Jhansie, 2.

24. The characteristics of the litigation of the year in the several divisions remain much the same as heretofore.

25. In Rohilcund there was the greatest number of cases (27) connected with the confiscations subsequent to the Mutiny, while in Benares there was the greatest number of suits to set aside orders (17) and in behalf of or against the Court of Wards (32). The subjoined Statement C. shows very clearly the nature of the litigation in each division :—

C.

	For.	Against.	Pending.	Total.	Meerut.	Rohilcund.	Agra.	Allahabad.	Benares.	Jhansie.
Contract, ...	12	5	5	22	6	3	6	6	1	...
Exchequer, ...	16	3	4	23	0	13	1	3	4	2
Confiscations, ...	25	18	13	56	9	27	2	3	15	...
Wards, ...	19	14	8	41	1	0	3	5	32	...
Crown-lands and Escheats, ...	18	8	11	37	3	10	12	7	5	...
To set aside orders, ...	31	10	5	46	7	10	4	8	17	...
Trespass, ...	5	5	2	12	3	0	2	0	7	...
Wages, ...	1	0	0	1	0	0	0	0	1	...
Costs, ...	30	38	24	92	19	57	2	3	11	...
Total, ...	157	101	72	330	48	120	32	35	93	2

26. The amount of costs incurred, awarded, and recovered is shown in the following table :—

D.

Divisions.	Incurred.			Awarded.			Recovered.		
	Rs.	As.	P.	Rs.	As.	P.	Rs	As.	P.
Meerut, ...	5,958	1	7	5,958	1	7	141	8	9
Rohilcund, ...	5,923	5	0	293	2	3	184	9	9
Agra, ...	1,304	15	4	1,183	2	1	235	10	9
Allahabad, ...	10,147	2	9	9,537	12	7	6,325	3	5
Benares, ...	2,372	3	3	1,076	5	3	7,072	2	0
Jhansie, ...	116	7	0	116	7	0	116	7	0
Total, ...	25,822	2	11	18,164	14	9	14,175	9	8

The statement has been compiled in the same form as that of last year,—the returns submitted not giving in all instances the information on this head which they should contain to enable the Board to act up to their expressed intention of entering only the costs in decided cases. But orders have now been issued to ensure that the annual statements contain the information required by Circular Order No. 17, dated 29th July, 1864.

27. It remains only to notice those cases which, either from the circumstances in which they originated, or the legal points involved in them, possess more than ordinary interest.

28. This case, referred to in para. 23 of last year's Report, is now in the hands of the Crown Solicitors at home, but it has not yet been decided whether it involves a value which would bring it within the cognizance of Her Majesty's Privy Council. Evidence, however, has been forwarded on this technical point, and the Board hope to be able to announce the final decision in this case before very long.

Government, Appellant, *versus* Mussumat Khanzadee Begum.

29. This suit, referred to in para. 26 of last year's Report, has been appealed to the High Court; but the result of the appeal is not yet known. The Government Vakeel has, however, reported that the case has been heard and argued before Judges Turner and Spankie.

Collector of Moradabad *versus* Mussumat Doorga.

30. In the case entered at para. 37 of last year's report, the Board—after a perusal of Commissioner's report stating that the Government Vakeel was in fault, but that hitherto there have been no other complaints about him, and that probably the notice taken by the Board of his inattention and neglect will serve as a warning for the future—have accepted this statement, and taken no further action in the matter.

Chotah Lall *versus* Collector of Furruckabad.

31. Among other cases which are interesting are the following :—

32. This was a suit brought to set aside an order passed by Captain Thomason, as Executive Engineer of the Rohilcund Canals, regarding the irrigation of certain land, the property of plaintiff. The case has gone against Government in both the Court of first instance and appeal. The Board refrain from making any comments on the legal aspects of the contentions set up for Government, as the case has been noticed in Government orders No. 467A., dated 3rd June, 1867. A copy of the final decision was forwarded to you with my No. 830, dated 8th November last.

Guneshee Lall *versus* Ishree Pershad and another.

33. This case is noticeable rather as regards the course pursued by the Judge than for any other point of interest. It was originally dismissed by the Judge. The Collector writes as follows :—

Gokul Chund *versus* Government—Collector of Bareilly.

"The suit was originally dismissed by the Judge; in "appeal it was remanded by the High Court, in order that it may be ascertained "afresh whether the suit is barred by limitation.

" The Judge did not enter into the question of limitation. He decided the case " on its merits. He held that, as the property is entered in the plaintiff's name in " the haftganah papers appertaining to the period previous to the Mutiny, it belonged " to him, and not to his rebel brother Chotey Lall, and was therefore not liable to " confiscation for the rebellion of the latter.

" The lands in suit escaped confiscation in 1858, when the rest of Chotey " Lall's property was escheated to Government. On the fact coming to the notice " of the authorities, an order was passed, under date the 12th April, 1864, rectifying " the omission. The property was accordingly entered in the Confiscation Register " by the Tehseeldar, to whom the Rubbee collections for 1271 Fuslee were accounted " for by the lumberdar of the village: so, strictly speaking, the order of attachment " came into effect from the Rubbee; and as no suit was brought by plaintiff within " the period of grace of one year allowed by law, the present action is barred by " limitation according to the strict letter of the law.

" But as Government has lost the case on the merits, I should be sorry to recom- " mend an appeal being made solely on the plea of limitation.

" I would suggest that further proceedings be dropped. Should you or the " Board hold otherwise, the Government Pleader at Agra may be instructed to prefer " an appeal."

34. The Board, in the circumstances stated by Mr. E. Colvin, directed that the case should not be pressed any further.

35. This case, which was noticed in paragraphs 34 to 38 of the Report for 1865-66, was brought to a successful issue before the Chief Court, Lahore, whose decision is extracted below :—

Collector of Boolundshuhur *versus* Nanuck Chund.

" This suit was originally brought in the Court of the Deputy Commissioner " of Hissar against defendant, as executor to the estate of the late Thomas Skinner, " for Rs. 4,000, balance due on a bond, and Rs. 631 interest, and was decided *ex-parte* " in favour of plaintiff. On appeal to the Commissioner, defendant urged that as the " contract was made at Belaspore, in the Meerut District, the Court of the Deputy " Commissioner of Hissar had no jurisdiction, and the case should have been deter- " mined at the place where defendant dwells. The Commissioner upheld the deci- " sion of the Deputy Commissioner, remarking, 'As the cause of action really " ' occurred at Hansi, in the Hissar District, it was open to the plaintiff to sue at " ' Hissar, under the provisions of Clause 10, Section 1, Part II. of the Punjab Civil " ' Code. Although the defendant resided at Boolundshuhur, and although the bond was " ' executed at his place of residence, the money was borrowed at Hansi, through the " ' agency of the native agent of the Skinner estate; and at Hansi is the plaintiff's " ' shop, and there is his business carried on.' Defendant appeals to Chief Court, " urging, as before (*inter alia*), that the Hissar Court was out of jurisdiction.

" *Mr. Justice Boulnois.*—The place of payment of the money (Hansi) is the place " where the breach of the contract took place. But the place where a cause of action " arises has been held to be determined by not merely the locality of the breach of " the contract. The whole cause of action is said to arise in the district wherein the " contract is made and wherein the breach also takes place. The matter has been so " firmly established by the decisions of the Courts both of Madras and Calcutta, fol- " lowing *Walsh* v. *Ionides*, 22 L. J., Q. B., 137, that it cannot be questioned.

" In this respect para. 10 of Section 1, Part II. of the Punjab Civil Code, in force " at the time when this case was decided in the Court of first instance, uses the same " words as Section 5 of Act VIII. of 1859.

" The Commissioner's order must be reversed, and this suit dismissed, on the " ground that the Court of the Deputy Commissioner of Hissar had no jurisdiction.

" *Mr. Justice Roberts.*—As the whole cause of action—*i. e.*, not only the contract, " but the breach also—did not occur in any one jurisdiction, the venue must lie where

" the defendant dwells, and he did not dwell in Hissar. The orders below are " reversed for want of jurisdiction. Costs for appellant."

36. The Board notice this suit with a view to bringing prominently before District Officers the necessity for care when putting up Government property for sale. The decision of the High Court which is quoted below gives the facts of the case. It will be observed that Government was cast in costs with which it would not have been saddled had the executive officer been careful to ascertain the exact condition of the property put up to sale.

Government (Defendant), Appellant, *versus* Elahee Bux (Plaintiff), Respondent.

37. The Board, however, venture to doubt the soundness of the law which has been laid down in the decision in question.

38. Here the Government sold certain property to the plaintiff, both the vendor and vendee being apparently unaware that a third person, a trespasser, had encroached upon the land. The plaintiff brought his action against the trespasser and the Government conjointly, though the Government pleaded non-liability, as it could convey, and did convey, a good title to the plaintiff as against this third person in unlawful possession. The plaintiff, in obtaining a verdict against the trespasser, obtained full possession of the property sold to him by Government, and had no cause of action against Government.

39. The real issue is whether the Government, as vendor, was bound not only to give a good title to the vendee, but was also bound to covenant for his "*quiet enjoyment.*" The Court appear to have applied to this case the doctrines which are recognized as governing covenants in cases in the English Courts, and for covenants entered into by vendors seized in fee. It is questionable how far these doctrines are applicable in this country; but, putting this question aside, it would appear that in this special case only a general covenant was entered into by the Collector on behalf of Government as vendor. Now, it has been held in the English Courts that " a general covenant by B that he is seized in fee and has a good right to convey does not extend to the wrongful act of a stranger."—Jerritt *versus* Weare, 3 Price, 575 : Petersdorff, Volume III., page 483.

40. The Board, however, offer these remarks with hesitation, though it is apparent that, had the plaintiff in this case brought his action against the wrong-doer only, he would equally have obtained full satisfaction.

DECISION.

HIGH COURT OF JUDICATURE FOR THE NORTH-WESTERN PROVINCES.

Dated Agra, the 18th April, 1867.

APPELLATE JURISDICTION.—CIVIL SIDE.

Present :

THE HON'BLE SIR W. MORGAN, KT., *Chief Justice.*

and

THE HON'BLE W. ROBERTS, *Judge.*

MISCELLANOUS.—CASE No. 2005 OF 1868, { *Review of the Court's Judgment, dated 5th June*, 1866, *in Special Appeal from the decision of G. D. Turnbull, Esq., Judge of Zillah Meerut, dated 16th December*, 1865.

Government (Defendant), Appellant,

versus

Elahee Buksh (Plaintiff), Respondent.

" The appeal is by the Government against the Judge's order directing the costs of " certain parties, including the Government, to be borne by themselves. We cannot say " that the Government (the vendor) was needlessly or improperly made a party to the " suit, which is by the vendee, to recover a portion of the property sold, on which the " zemindar (defendant) had encroached. The plaintiff has succeeded in the suit. The " encroachment was in existence before the sale, although the fact that a part of the " land put up for sale was in this condition does not appear to have been in any way notified

" at the time of sale, if it was then known to the Government or its agents. We think " nothing has been advanced to show that the Government should not justly be charged " with its own costs of the litigation.

" We dismiss the appeal, with costs, and interest at 6 per cent.

(Sd.) " W. MORGAN, *Chief Justice.*
(Sd.) " W. ROBERTS, *Judge.*

" (True copy.)
(Sd.) " J. CLARKE, *Asst. Registrar.*"

Dwarka Dass *versus* Government.

41. This suit has been under the notice of Government, and steps have been taken to remedy the law, so as to prevent the great inconvenience which the law as it now stands might give rise to. In this case the interests of Government are largely concerned.

Himmut Singh *versus* Collector of Bijnour.

42. This suit has been decided against Government by the Judge of Moradabad; his decision, however, has been appealed, both by the plaintiff and defendant, to the High Court. The Board defer their remarks on the case till the result of the appeal is known. In the meanwhile Mr. Millett and Baboo Pearee Mohun have been retained for Government.

43. A suit has lately been brought against Government by the Banker of the 4th Bengal Cavalry to recover a large sum of money in connection with the accounts laid before a Court of Enquiry, held in 1866, by order of His Excellency the Commander-in-Chief. The claim, which is preposterous, can be more conveniently noticed at length when the suit is in a more advanced stage, and it will be referred to in the next Report.

Bahadoor Khan and Ally Bahadoor *versus* Government and Rajah Misr Baijnath.

44. This case presents features of a somewhat peculiar nature, and the Board would approach it with hesitation if it were necessary to comment upon the decision of the Judge. The facts of the case, however, render it unnecessary to do so: they speak for themselves.

45. The plaintiffs in this case are the heirs of the notorious rebel Khan Bahadoor Khan, who administered Bareilly and the adjoining country on behalf of the King of Delhi during the months which intervened between our expulsion from Rohilcund in 1857 and the subsequent restoration of British supremacy.

46. They sued to recover a portion of Khan Bahadoor's confiscated property, and impleaded Rajah Baijnath, as well as the Government, because the former had obtained possession of the land from Government. The case was decided against Government by the District Judge, but his decision was reversed on appeal, in the following terms, by the High Court:—

HIGH COURT OF JUDICATURE FOR THE NORTH-WESTERN PROVINCES.

Dated Agra, the 3rd May, 1867.

APPELLATE JURISDICTION.—CIVIL SIDE.

Present:

THE HON'BLE SIR W. MORGAN, KT., *Chief Justice*,
and
THE HON'BLE W. ROBERTS, *Judge.*

CASES NOS. 9, 16, 21, AND 25 OF 1867, { *Regular Appeal from the decision of H. Vansittart, Esq, Judge of Bareilly, dated 14th November*, 1866.

CASE NO. 9.

Mahomed Bahadoor Khan (Plaintiff), Appellant,
versus
Government (Defendant), Respondent.

" The four appeals are from the decision of the Judge of Bareilly, pronounced in a " suit brought by Mahomed Bahadoor Khan and Mahomed Ally Bahadoor Khan against

" the Collector of Bareilly and other persons, grantees or purchasers of property which " had been confiscated as belonging to the late Khan Bahadoor Khan.

" The plaintiffs sued to recover the property in question as property which belonged " formerly to their father, Tufuzool Hossein Khan, and after his death, to the plain- " tiffs. The Court below decided that the suit was barred by limitation as to one of the " plaintiffs, but that the younger plaintiff, Mahomed Ally Bahadoor Khan, was entitled " to a decree.

" In the view which we take of this case, it is not necessary that we should consider " whether or not the property in suit really belonged to the plaintiff's father, and on his " death descended to the plaintiffs. It appears certain that at and previous to the time " of the conviction of Khan Bahadoor Khan it was in his possession and under his con- " trol, and that it was seized and confiscated as a portion of his possessions. If so, the " plaintiffs' right of suit to recover it is now barred by the operation of Section 20 of " Act IX. of 1859. By that section the rights of persons not charged with the offence " therein referred to in respect of any property seized as forfeited, or liable to be forfeited, " are saved; but such saving is subject to the stringent proviso in the latter part of the " section, whereby all rights of suit in respect of such property are taken away unless " the suit is instituted within one year from the seizure. The law being conceived in " general terms, the Courts are not at liberty to introduce into it any exceptions, however " just and reasonable they may appear, and however consistent with the principles on " which laws of limitation are ordinarily based. The law in question is a special law, " and this provision was probably designed to promote the speedy assertion and adjudi- " cation of all rights put forward to forfeited property. The exception in favour of mino- " rity and other legal disability which the general law of limitation of suits (Act XIV. of " 1859) contains have no place in this Act, and cannot be introduced by the tribunals, " which are bound to give full effect to the law. Upon this principle, the plaintiffs, not- " withstanding that they were minors at the time of the seizure, can claim no exemption " from the operation of Section 20; and assuming the property sued for to have really " belonged to them, yet, as it was seized as a part of the confiscated property of Khan " Bahadoor Khan, they can now maintain no suit for its recovery, more than one year " having elapsed from the time of seizure.

" The Appeals Nos. 16, 21, and 25 are decreed, and No. 9 is dismissed, but " without costs.

(Sd.) " W. MORGAN, *Chief Justice.*

(Sd.) " W. ROBERTS, *Judge.*

" (True copy.)

(Sd.) " J. CLARKE, *Asstt. Registrar.*"

47. The Commissioner, in forwarding an application from Baijnath to be relieved of the cost to which he had been put (Rs. 2,653) by the Judge's erroneous procedure, thus comments upon the case :—

" *From* JOHN INGLIS, ESQ., *Commissioner of the Rohilcund Division, to* W. C. PLOWDEN, " ESQ., *Secretary, Board of Revenue, North-Western Provinces* (*No.* 610).— " *Dated Bareilly, the 22nd November,* 1867.

" SIR,—I have the honour to submit, for the favourable consideration of the " Board of Revenue, an application from the heirs of Rajah Misr Baijnath for payment " of the costs incurred by them in defending the suit brought by Khan Bahadoor Khan " and Ali Bahadoor Khan against Government and Rajah Baijnath, grantee of some " of the confiscated property of Khan Bahadoor Khan.

" 2. The circumstances of this case are peculiar, and I think the prayer of the " applicants deserving of consideration.

" 3. The suit was brought by Bahadoor Khan and Ali Bahadoor Khan as " paupers, under Section 297, Act VIII. of 1859.

" 4. The first plea urged in defence by the Government and the co-defendant " was that the suit was barred by the limitation laid down in Section 20, Act IX. of " 1859.

" 5. By the provisions of Section 304, Act VIII. of 1859, the Judge was bound " to decide whether the suit was barred by the statute of limitation or not before " allowing the petitioners to sue as paupers."

" 6. Although this was specially urged on the attention of the Judge, he " declined to adjudicate on this issue, and admitted the suit.

" 7. The consequence was protracted litigation, during which it became necessary, " for reasons which have previously been brought to the notice of the Board, to employ " Mr. Conlan as Pleader on the part of Government, and thus materially increase the " cost of the defence.

" 8. The Judge's decision was against Government, which necessitated an appeal " to the High Court, and further expenditure in costs and fees. The High Court at once " decreed the appeal, on the ground that the suit was barred by the limitation laid down " in Section 20, Act IX. of 1859, and declined to go into the merits of the case.

" 9. Thus the plea first urged on the part of Government against the admission " of the suit as a pauper one, and which the Judge refused to adjudicate on, although " required to do so by the provisions of Section 304, Act VIII. of 1859, as ultimately " given in favour of the defendants by the High Court.

" 10. Had the Judge given a decision on this point before admitting the case as " a pauper one, the heavy costs ultimately incurred by the defendants would have " been saved.

" 11. For this reason, I think that the applicants have good grounds for soliciting " the favourable consideration of the Board to their request.

" I have, &c.,
(Sd.) " J. INGLIS,
" *Commissioner.*"

48. The application of the Rajah has been acceded to, and the Government has saddled itself with the costs which he had been compelled by the erroneous procedure by the Judge to incur.

Ranee Chandel and Court of Wards, Appellants, *versus* Koonwur Roop Singh.

49. The subject of action in this case was an annuity payable from the estate of a minor under the Court of Wards,—payment of which, however, had been stopped by the administrative authorities in consequence of the rebellion of the plaintiff.

50 The plaintiff was a proclaimed and fugitive rebel, who did not appear before any competent Court and clear his character in the manner provided for such cases in Section 18 of Act IX. of 1859. As an act of grace, he had been allowed to remain unmolested, but under supervision, and a small allowance had been granted by Government for his subsistence. After the lapse of five years, during which time the annuity had not once been claimed by plaintiff, he brought this action to compel the estate to continue payment of it. This much being beyond controversy, it only remained to decided whether the rebel's property, including, and mainly consisting of, this annuity, had ever been " attached or seized," in the sense of the section quoted above. The evidence tendered to the High Court by the Government (appellant), consisting chiefly of official correspondence, was such that certain and sundry facts establishing a " constructive attachment," were held to be " sufficiently collected," and judgment

was accordingly recorded in favour of Government; but costs were refused, "in consi-
" deration of the mode in which the appellants have established their case." This refers solely to the *nature* of the evidence adduced, which was of a secondary order, but was common to both the parties to the suit. As this evidence, such as it was, was held to be *sufficient*, it seems hard that the successful party should be fined in the amount of the costs incurred in a case instituted by the plaintiff, without even legal, much less equitable, grounds of action.

HIGH COURT OF JUDICATURE, NORTH-WESTERN PROVINCES.

Dated Agra, the 12th June, 1868.

APPELLATE JURISDICTION.—CIVIL SIDE.

Present:

THE HON'BLE SIR W. MORGAN, KT., *Chief Justice*,

and

THE HON'BLE W. ROBERTS, *Judge*.

CASE NO. 71 OF 1868, { *Regular Appeal from the decision of Moulvie Mahomed Wajab-ool-lah Khan, Principal Sudder Ameen of Mynpoorie, dated 22nd January*, 1868.

Ranee Chandel, &c., and the Collector of Etawah (Defendants), Appellants,

versus

Kooer Roop Singh (Plaintiff), Respondent.

BY THE COURT.

" The defendants appeal from the decree of the Principal Sudder Ameen, made in " favour of the plaintiff in a suit brought to recover the sum of Rs. 15,600 on account of " the arrears of an annuity. The plaintiff, who is the younger son of a former Rajah of " Bhurrah, had, prior to the year 1857, established his right to an annuity of Rs. 1,000, " payable from the estates of the Raj. This payment had been withheld from him " since that year, and he sued to recover the arrears with interest.

" The defence set up was that the plaintiff had become a rebel and fled from justice, " that his property had been attached and confiscated, and that the estate of the present " Rajah (a minor) had become discharged from all liability on account of the annuity.

" The Principal Sudder Ameen was of opinion that there had been no valid confisca-
" tion or attachment, and that the plaintiff's right to the annuity must still be regarded " as subsisting.

" When the case was heard by us on the 26th of May last, we found that the evi-
" dence of the proceedings in 1858 and subsequent years relating to the annuity, and the " mode in which it had been dealt with, consisted of little more than official correspond-
" ence of a date long subsequent to the matters to be established; and we permitted an " adjournment for the purpose of affording opportunity for adducing further and more " formal evidence with respect to the alleged attachment and confiscation. The books " of the estate under charge of the Court of Wards were to be examined, and any docu-
" mentary evidence which might be available was to be produced.

" The case has been again brought forward this day, but without any satisfactory " additional materials.

" There would probably be little difficulty in arriving at a conclusion if we had " before us proper evidence to show the mode in which the annuity has been disposed " of, and the several orders under which it has been dealt with. In the present state " of the record we have still little beyond the official correspondence.

" This has been referred to by both sides, and, forming part of the record, we may " properly take it into consideration in default of other strictly legal evidence."

" The plaintiff, having joined the rebels and taken an open and leading part with " them, after a time left our territories. A reward of Rs. 5,000 was set upon him as " a rebel leader, and after a time he was captured in the Gwalior territory and delivered " up in 1861 or 1862.

" No formal proceedings were ever taken under Sections 2 and 7 of Act XXV. of " 1857 for adjudicating his property, which consisted of little more than the annuity, " to be forfeited. But it is to be collected from the correspondence that the annuity " was withheld, and the investigation recently made of the books of the estate as reported " to us by Mr. Conlan appears to show that this annual payment was no longer regarded " as a charge on the estate, but was treated as merged. That the plaintiff himself " received no payment on account of it, is to be inferred from the form of his present " suit. He made some attempt in the year 1865 to obtain execution of a decree formerly " recovered by him, but in this he failed, and was referred to a regular suit. It is " clear that the order made by the Sudder Court on that occasion affords no such infer- " ence in the plaintiff's favour as has been drawn from it by the Principal Sudder " Ameen.

" It appears to us that the question for determination is whether, having regard to " the terms of Section 18 of Act. IX of 1859, there has been an attachment of this " annuity. If there has, it cannot be called in question by the plaintiff, who did not " surrender himself or fulfil the requirements of that section. It is true that no specific " charge of any offence had been made, but the fact of a reward being offered for his " apprehension, and the terms in which it was offered, sufficiently show that he was " regarded as a rebel, and that his apprehension on this account was attempted. As to " his pardon, to which the Principal Sudder Ameen refers, it is clear that, although his " life was guaranteed to him, he was not freed from all liability for the consequences of " his offence. He was allowed to live under surveillance, and a periodical report of his " conduct was requested; and it was not until a time subsequent to the commencement " of this suit that he was completely freed from this restraint. The Rajah's estate, out " of which the annuity was payable, was, in and subsequent to the year 1857, and is " still, under the management of the Court of Wards,—that is, of the Collector. The " same official in another capacity would have the duty of attaching the rebel's property, " and as the ordinary mode of attachment by seizure and taking possession was not " applicable to this description of property (a payment made annually out of the estates " under his charge), it becomes necessary to ascertain whether, having regard to this " state of circumstances, the acts done by him subsequent to the plaintiff's rebellion " may be accounted as equivalent to an attachment.

" We have already stated that there was no adjudication of forfeiture; but attach- " ment, if made, cannot be called in question, except under the provisions of Section " 18 of Act IX. of 1859.

" The mere withholding of the payment of the annuity by those who had the " management of the estate which was charged with the payment would be an illegal " act, in no way affecting the plaintiff's right. But if payment was withheld by the " direction or authority of the official who was authorized to make attachment of the " rebel's property; and if, further, it appears that by his direction the payment was " regarded in the future management of the estate and in the accounts thereof as one " no longer to be made, the estate having been released from the charge; and if the " Government sanction to this mode of dealing with the annuity be shown, then the " result must be that there has been that which, adverting to the nature of the property, " is equivalent to an attachment or seizure thereof.

" From the correspondence these several facts are, we think, to be sufficiently " collected.

" It is true that it would have been far more satisfactory to have had, in place of " Mr. Hume's certificate, given in 1865, with respect to the attachment made many " years previously, the evidence of that gentleman, supported by any documents.

" But the correspondence having been admitted in the record, and having been " referred to both by respondent and appellants, their contents may be accepted as " admissible evidence.

" We shall reverse the Principal Sudder Ameen's judgment, but, considering the " mode in which the appellants have established their case, we shall give no costs of " appeal.

(Sd.) " W. MORGAN, *Chief Justice.*

(Sd.) " W. ROBERTS, *Judge.*"

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51. The case of Palmer *versus* Collector of Cawnpore involves points of considerable interest, but as the decision in this suit has been appealed, the Board defer making any comments on this important case.

52. The Board regret to be compelled to notice the very perfunctory manner in which Mr. Drummond, the Commissioner of Rohilcund, discharges his duties in regard to suits in which Government is impleaded or concerned. This is not the first time that the Board have had to observe upon the dilatoriness which marks Mr. Drummond's procedure. Last year they were obliged to call upon him for an explanation in regard to several cases while he had charge of the Agra Division. I am now to notice some of the cases which have attracted the Board's attention since Mr. Drummond's transfer to Bareilly.

Government *versus* Gopee Chund and others.

53. In this case it was proposed by the Collector to sue to recover certain shops in a serai, valued at Rs. 459, and to set aside the sale in execution of a decree obtained by collusion.

54. This proposal was submitted to the Board by Commissioner in his No. 86, dated 28th February, and on the 13th March the Board replied that it was not at all certain the serai in question belonged to Government, and requested that this point might be determined before the suit was instituted. On the 12th May, after an interval of two months, the Commissioner replied that the serai was Government property. The suit was then barred by limitation, and the Board was powerless in the matter.

Nizam Begum *versus* Government.

55. In this case the plaintiff sued *in formâ pauperis* to recover possession of 3,000 yards of land valued at Rs. 3,000, and to recover Rs. 460, value of a house which stood thereon and had been destroyed for strategical purposes in 1858.

56. The suit was defended, but the plaintiff obtained a verdict in the Principal Sudder Ameen's court. The Collector proposed to appeal. His letter No. 321, dated 6th June, 1867, and the memo. of appeal, are given below :—

" Adverting to previous correspondence ending with your No. 49, of 2nd Febru- " ary, 1867, I have the honour to submit copy together with a translation of the judg- " ment of the Principal Sudder Ameen in the case of

" Nizam Begum
" *versus*
" Government,

" from which it will be perceived that Government has been cast in the suit.

" 2. The decision appears to me to be erroneous. The case of Government is very " simple. A house belonging to plaintiff's husband was, along with the other houses " of Now Mohulla, destroyed for strategical purposes on the re-occupation of the district " in 1858. For the house no compensation, agreeably to the late Advocate-General Mr. " Ritchie's opinion, can be allowed; and the opinion affecting a purely administrative " measure, its legality or otherwise cannot be contested in the Civil Court. It is only

" in cases of prolonged occupation of the sites of demolished houses that parties can claim " compensation and can go to law, when such claim is rejected by Government; but in the " case under report the sites belong to Government by virtue of confiscation,—all the " lands in Now Mohulla having been confiscated for the rebellion of the Syuds. Plain- " tiff's husband was a Syud, and his entire rights were confiscated. If he had any reason " to believe that the confiscation order was illegal, he had his remedy in an action in the " Special Commissioner's Court, which was especially opened for the adjudication of these " claims; but as he, and on his death his widow, wilfully or otherwise neglected to do so, " the suit now brought is completely and absolutely barred by limitation under Section " 20, Act IX. of 1859.

" The finding of the Court that the house was never confiscated, and therefore the " special limitation of one year is not applicable, is opposed to the real facts of the case. " The house, having been destroyed immediately on the re-occupation of the city and " during the enforcement of martial law, was non-existent when the order of confiscation " was passed against Gureeb Shah's property; hence, in the statement of confiscation, the " house in question may not have been entered. But this does not in any way affect the " merits of the case, for the whole village of Mukrundpore having been confiscated, the " order embraced all the lands, *abadee* or otherwise. Hence the present action, which " claims the release of a portion of such land, should be governed by the special limita- " tion above adverted to.

" The memorandum of appeal submitted by the Government Pleader, and a transla- " tion of which is also enclosed, may be filed on the part of Government.

" As the term of appeal expires on the 22nd instant, I would request that, pending " the receipt of Board's orders in the case, sanction to the institution of the proposed " appeal be accorded."

" *Translation of the Memorandum of Appeal proposed by the Officiating Government* " *Pleader in Result of*

" Mussumat Nizam Begum

" *versus*

" Government.

" Government, defendant above named, appeals to the Zillah Court at Bareilly " against the decree of the Principal Sudder Ameen in the above suit, dated the 6th " day of May, 1867, for the following reasons, namely :—

" 1*st*,—The house having been demolished, and the property of Gureeb Shah con- " fiscated to Government during his life-time, and no action having been brought by " him for the release of the same within the prescribed limitation of one year, plaintiff " cannot bring any suit as his (Gureeb Shah's) heir-at-law. The Court was duly ap- " prized that copy of the Advocate-General's opinion referred to in the defence was filed " in the suit of Syud Mahomed Kasoom *versus* Government, and was moved to send " for the same for inspection. It was further urged that Gureeb Shah died, leaving as " heirs, plaintiff, his wife, and two sons; plaintiff should not have therefore brought the " present action as the sole heir of the deceased. The claim being thus barred on " every ground, plaintiff cannot, agreeably to Sudder Courts' precedents, get the benefit " of the investigation made regarding the compensation payable for the demolished " houses.

" 2*nd*,—The finding of the Court that the shares in the holdings of an estate " being quite distinct from right of proprietorship in *abadee* land, and that the houses " having been destroyed for strategical purposes, the special limitation laid down in " Act IX. is not applicable to the present action, is bad at law, and entirely founded " on suppositions at variance with the facts of the case, inasmuch as the entire village of " Mukrundpore, including all rights of proprietorship in it, was confiscated, and is entered " in Statement No. 2. The order of the Court drawing a line of distinction between

" zemindaree and *abadee* lands is therefore irregular. All the houses situated in the " Nao Mehla Mohulla were in May, 1858, on the reoccupation of Bareilly, demolished " by order of the Military authorities for strategical purposes, and during the time that " martial law prevailed; and as neither plaintiff nor her husband had brought any suit " within the prescribed period of one year, calculated whether from date of confiscation " or demolition, the present action is, under Section 20, Act IX. of 1859, barred by " limitation.

" 3. Proofs establishing the point that the *abadee* land belonging to plaintiff's " husband was appropriated for the Budaon Road were filed by Government, and are in " the misl of the case. It is therefore not clear why the Court should have taken upon " itself to state that no such evidence was brought forward. The measurements made " by the Court Ameen, which have been admitted in evidence to show the extent of " land belonging to plaintiff, are at variance with these filed in the suit of Mahomed " Nujuf.

" (True translation,)

(Sd.) "E. COLVIN,

"*Offg. Collector.*"

57. His proposals were sanctioned by the Board on the 21st June, 1867. On the 10th December, 1867, the Judge dismissed the appeal with costs.

58. On the 23rd March, 1868, the Collector submitted the accompanying proposal to the Commissioner.

" In continuation of correspondence ending with your predecessor's No. 296, of " 26th June, 1867, relating to the suit of

Nizam Begum

versus

Government,

" I have the honour to submit copy of the Judge's decision in the case, from which " it will be perceived that the appeal preferred by Government has been dismissed " with costs.

" 2. The circumstances and bearings of the case have been discussed at length in " my previous address, and do not call for a recapitulation here.

" 3. The Judge declares that Gureeb Shah's rights in the village were never confis- " cated; that he was never dispossessed; and that the limitation laid down in Section " 20, Act IX. of 1859, cannot therefore be applicable to the present suit. But I would " respectfully submit that the question at issue in the case was not whether plaintiff's " husband was a rebel or not, and whether his interests in the village were rightly " or wrongly confiscated. It is whether such confiscation did *de facto* occur; and, if so, " whether he or his heirs or representatives did avail themselves of the remedy allowed " them by law (Section 20, Act IX. of 1859) for obtaining release of their property " from such confiscation.

" 4. Neither of these questions can be answered in favour of plaintiff. Hence her " claim is wholly and absolutely barred by limitation.

" 5. The entire village of Mukrundpore has been in possession of Government " since the last several years. It is therefore not understood on what ground the " Court held that plaintiff's husband was never dispossessed.

" 6. Claim for the value of the materials of the house cannot, agreeably to the " late Mr. Ritchie's opinion, be legally entertained by any Court of Law.

" 7. It is therefore suggested that a special appeal be preferred in this case to " the High Court on the grounds—

" I.—That the house in claim having been demolished for strategical purposes " during the prevalence of martial law, no compensation can be allowed, agreeably to " the late Advocate-General Mr. Ritchie's opinion.

" II.—Plaintiff can legally claim only compensation for the permanent occupation " by Government of the site. But as such site was confiscated to Government, and " as no claim was brought in the Small Cause Court for its release within the period of " one year prescribed in Section 20, Act IX. of 1859, the present action is barred by " limitation.

59. On the 26th May the Board received the accompanying letter, dated 20th " May, from Commissioner, giving cover to Collector's letter of the 23rd March: —

" In continuation of correspondence ending with your docket No. 248, dated 21st " June last, in the suit of

" Nizam Begum

" *versus*

" Government,

" I have now the honour to submit for the consideration and orders of the Board " of Revenue the documents marginally noted, and " to recommend, as suggested by the Collector of " Bareilly, that a special appeal be preferred to the " High Court on the grounds proposed by Mr. " Colvin.

1. From Collector, Bareilly, No. 197, dated 23rd March, 1868, and enclosures, *viz.*:—
2. Copy of Judge's decision.
3. Vernacular version of ditto.
4. Copy of Government Pleader's opinion.
5. Translation of ditto.

" 2. I regret the delay that has taken place in the submission of these papers, " which, I beg to explain, is owing to the file having been accidentally mislaid."

60. On that day the Board telegraphed to Collector to file petition of appeal. The term of appeal had, however, expired that day, and the Government was unable to proceed with the appeal.

61. The Board addressed the following letter to the Commissioner, and his reply is subjoined:—

" I am desired by the Board of Revenue to acknowledge the receipt of your letter " No. 229, dated 20th ultimo, with enclosures, relative to the suit of Nizam Begum " *versus* Government, Zillah Bareilly, and in reply to draw your attention to the fol- " lowing remarks :—

" 2. The Collector forwarded the documents to you on the 23rd March last, and " they were received in your office on the 24th idem; but you did not pass on the case " for the Board's orders till the 20th instant, and it reached this office on the 26th, the " very day on which the time for appeal expired.

" 3. The Board telegraphed to the Collector to file the petition of appeal at " once, but the Collector replied by telegram that it was too late.

" 4. I am requested to draw your attention to the fact that this is the third case " in which the interests of Government have within a brief space been perilled or " sacrificed by delays in your office.

" 5. You should submit an explanation of the delay of nearly two months, " during which time the papers appear to have been going backwards and forwards in " your office; and at the expiration of that time they are forwarded with a formal " covering letter, which apparently might have been written the day after the docu- " ments were received from the Collector."

" I have the honour to acknowledge your letter No. 201, dated 1st instant, calling " for an explanation of the cause of delay in the submission of the papers in the suit " of Nizam Begum *versus* Government, Zillah Bareilly.

" 2. In reply, I beg to state that the cause of delay was explained in para. 2 of " my letter No. 229, dated 20th May last; and that I have no other explanation to " offer.

"3. I beg again to express my regret at the occurrence."

62. In concluding their Report, the Board desire to place on record their high sense of the value of the services of Lalla Man Rai, the Government Pleader at the High Court, Agra. He was appointed Government Pleader in July 1857, and since then he has acted continuously as the legal adviser of Government; but an attack of paralysis has lately deprived the Board of his valuable services. Baboo Piaree Mohun has been recommended as his successor, but the Board feel it a difficult task to replace an advocate of the ability and integrity for which Lalla Man Rai has been so conspicuous.

I have the honor to be,

SIR,

Your most obedient Servant,

W. CHICHELE PLOWDEN,

Secretary.

No. 121A of 1868.

FROM

R. SIMSON, ESQUIRE,

Secy. to the Government,

North-Western Provinces,

To

THE SECRETARY TO THE BOARD OF REVENUE,

North-Western Provinces.

DATED NYNEE TAL, THE 24TH OF SEPTEMBER, 1868.

JUDICIAL DEPARTMENT. (CIVIL.)

SIR,—I am directed to acknowledge the receipt of your letter No. 689, dated the 27th ultimo, in which the Board of Revenue report, in their capacity of Legal Remembrancer, on Civil suits in which Government has been a party, during the year 1867-68.

2. The Lieutenant-Governor regrets to observe that the office of the Commissioner of Benares proved unpunctual in the submission of this, as in the case of several other reports.

3. The number of cases in which Government has been a party has decreased during the year by about one-sixth. This reduction of Government litigation is satisfactory.

4. The result of cases brought by Government, as shown in the statement appended to paragraph 7, is on the whole satisfactory.

5. Of the 194 cases laid against Government, not more than 55·7 were given in its favour. The unfavourable character of this percentage is in a large measure owing to the result in the case of "applications," of which 36 were decided against Government, out of 37 disposed of. Either there must be a want of judgment in making these applications, and indeed, generally, in the course of defence, or, with reference to the explanation in your 12th paragraph, the institution of the applications is a consequence of the unjustifiable laches of the Government officials. It is hoped that the instructions issued by the Board to prevent the occurrence of such carelessness will in future be duly attended to.

6. The fact that no special appeal, whether instituted by or against Government, was successful, would tend to show generally that special appeal is unadvisable, except under very extreme and unusual circumstances.

7. On a consideration of the results stated in your 14th paragraph, the Lieutenant-Governor cannot but conclude that the conduct of suits is not yet all that is required, and His Honor hopes for further improvement in the current year.

8. With reference to the Board's remarks in paragraph 22, in regard to the number of suits brought against Government in the Non-regulation Provinces, the Lieutenant-Governor trusts, that though there the officers of the Executive and Civil sides are the same, yet every facility is given to discontented claimants to bring the action of the Executive under review of the Civil Courts.

9. The reason of there being so many miscellaneous applications in Rohilkund should have been explained.

10. The Lieutenant-Governor regrets to observe that the Board have had to draw attention to the dilatory and perfunctory manner in which the Commissioner of Rohilkund has discharged his duties in connection with Government suits. In the first *of the cases quoted by the Board, the claim of Government seems to have been weak in itself, and the circumstance may form some excuse for the delay in the Commissioner's Office. But in the second (Nizam Begum *versus* Government) there appears to have been ample ground for questioning the decision of the Civil Courts, and the Commissioner must be conscious that, from the laches on his part, the opportunity was lost of regaining what had thus been apparently on insufficient grounds lost to the State. His Honor is sure that this consciousness cannot fail to be painful to an officer of Mr. Drummond's high sense of honour, and that it will stimulate him to avoid any similar oversight hereafter.

*Government *versus* Gopee Chund and others.

11. In conclusion, I an to state that the long and faithful services of Lalla Man Rai, the Government Pleader, deserve the honourable mention made in your last paragraph, and the Government would be glad to give Man Rai some token of their approval. The Board are requested to report what would be, in their opinion, a suitable mode of recognition.

I have the honour to be,
SIR,
Your most obedient Servant,
R. SIMSON,
Secretary to the Government,
North-Western Provinces.

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